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2 they have any documents in their possession right now they
3 should be produced in short order.

4 THE COURT: I'll keep that in mind, I'm going to,
5 when I issue the order is when I'm going to fill the dates
6 in so you'll see it when it comes out.

7 MS. PERRY: Thank you, Your Honor.

8 THE COURT: Okay, our next one I guess is from
9 Mr. Rickner, it's number 374, I'm going to start with
10 the defendants to see if there is anything they want
11 to say about the wording of the order?

12 MS. WEISS: Yes, Your Honor, this is another
13 issue with the word all. We can certainly produce
14 documents that we have and that are in our possession,
15 the defendants, but that doesn't necessarily account for
16 all that may exist. So I just wanted to point that out
17 again, and --

18 THE COURT: If I can just interrupt you, Ms.
19 Weiss, I'm just a little thrown off when you say we
20 can produce things in our possession but that's not
21 necessarily all. As I'm sure you know, Rule 34 only
22 requires you to produce things that are in your, I
23 forget the word, custody, possession, so what is it
24 you're getting at?

25 MS. WEISS: I do think, as I said before, it

1 kind of sets us up to fail because it's in, as we've
2 noticed throughout the litigation of this case,
3 plaintiffs very often revert to saying that things
4 should exist or they can't believe things don't exist.
5 And then when the defendants produce whatever they
6 have in their possession, custody or control,
7 plaintiffs often complain that that's not it, this is
8 not all. They certainly can't know what is in the
9 defendants' possession yet they claim to. And then if
10 the defendants supplement their response afterwards because
11 they have then found something else, plaintiffs tend
12 to complain that we violated an order or an agreement
13 because the first time we made a production we didn't
14 produce all.

16 So that's kind of our concern. I understand
17 what the Federal Rules say and we can only produce
18 what we have and we're required to supplement but we
19 do. But that just, it makes another place for
20 plaintiffs to complain and then, once again, write
21 emails and letters and go to the Court which we're
22 really hoping to try to have plaintiffs cut down on.
23 Because, as I think you've seen in the letter that I
24 submitted last night, it's, it's a lot.

25 THE COURT: Ms. Weiss, I have to say this line

1 of argument makes no sense to me. From what I've
2 gathered, what actually is typically happening is that
3 City is producing some materials, the plaintiffs are
4 noticing it's not all, you're conceding, as you just
5 did now in your discourse that you then come up with
6 it, and they're right, you did violate the order. Now
7 it's possible you did a reasonable search in which
8 case it's justified, but it's also possible you didn't
9 do a reasonable search and the only reason you came up
10 with the other stuff was because the plaintiffs
11 happened to know that it existed.
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13 So no one is being set up when they're being
14 told to produce all documents on a topic, that happens
15 every single day in every single litigation. Parties
16 then do a reasonable search and they don't feel
17 they're being set up. They produce the documents and
18 usually there's not an issue, and when there is an
19 issue then we solve it through the mechanisms. And,
20 you know, maybe we'll talk later about whether those
21 are working or not. But you're making me very
22 concerned with these objections, the idea that you are
23 incapable of producing, of doing a reasonable search
24 to produce the documents, it makes no sense.

25 So there's nothing on the substance of this

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then in terms of scope or date of the proposed order?

MS. WEISS: No, those, these are documents that we will produce. We would like a date further out than February 18th, that's a week from now, we would request 30 days to provide these documents.

THE COURT: Mr. Rickner, is there a deposition as to which these are going to relate that's coming up?

MR. RICKNER: Well, there may, it depends on what's in the documents so it's hard for me to know. We know for a fact that Dermot Shea weighed in on the sanctions on Mr. Mullins so, and I don't believe his deposition is within the next 30 days so that isn't the issue. But the problem is, is that I suspect there were an awful lot of high level people involved in this decision, I mean fire, the recommendation to fire the head of the Sergeants Benevolent Association is not a minor event at the NYPD, so I don't know. I don't know who was involved with that because I can't see under the hood because I don't have the documents. So there very well may be depositions that are currently scheduled and when we get the documents we're going to say, oh, no, I would have liked to have used this on some other person's deposition, like the

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Dowling deposition that's going right, going on right now. It also might be relevant to the 30(b)(6) depositions which are being scheduled, you know, within the next 30 days or taking place within the next 30 days, at least for some of them.

So it's hard for me to answer the question and it kind of highlights the entire problem we have, which is I don't know what there is and what there isn't until the City gives it to me. And, you know, I guess I would just say that if it does turn out that, you know, there are key documents to a witness whose deposition has already taken place, that we be able to recall that witness because we've certainly been diligent.

THE COURT: Right. Well, I mean the, I mean the email searches have happened, and that's a done deal. So this seems like it's documents mainly about an investigation, is that, was that what you're seeking, Mr. Rickner?

MR. RICKNER: Yeah --

THE COURT: Like these are actual investigation reports or something like that?

MR. RICKNER: Yeah, I mean my assumption is, is that there's, well we know there's the CCRB

1 investigation, in fact, several of them. I believe
2 there was also an internal NYPD investigation of some
3 kind, as well, I know less about what that looks like.
4 So, yes, so that is the, I guess sort of the meat and
5 potatoes of what we're looking for. But, again, there
6 may be other things that are relevant and I don't know
7 enough about how the NYPD structures these things to
8 know specifically what documents to look for. For
9 example, if there is a process that the NYPD goes
10 through when they decide to override the CCRB's
11 decision to fire somebody and go to a lesser sanction,
12 if there's, I don't know what that process is, but if
13 it's out there and it's document that's also included
14 in our requests.

16 THE COURT: Ms. Weiss, what do you know about
17 the burdensomeness of this request?

18 MS. WEISS: I, I don't know, to be honest,
19 Your Honor. We had originally objected to providing
20 these documents for a number of reasons, not including
21 burdensomeness, we'll now provide them. CCRB
22 documents I know are fairly quick and easy to get,
23 internal NYPD investigations not as easily acceptable.
24 And I know from other internal investigation documents
25 that the plaintiffs have requested in this case,

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there's many, many, many of them that they take quite a bit of time to get and that unit is very, very backed up right now. You know, we could certainly ask them to put something to the head of the line, but then it's just going to slow down the process for the other ones that, that the plaintiffs have asked for in these cases, you know. And, additionally, there's likely --

THE COURT: What other ones are you talking about? Are you talking about other incidents regarding arrests and so forth?

MS. WEISS: Yeah, other IAB and internal NYPD investigations into arrests and uses of force for these protests as well as I believe plaintiffs had requested individual IAB histories for defendant officers and witness officers. I don't have all of those requests in front of me right not, I apologize, but I do know that the IAB section has been working very hard and as quickly as they can to get us any other outstanding sort of disciplinary documents for other issues in these cases.

And if I may, Your Honor, although I understand that allegations of bias policing are a part of some of the plaintiffs' claims in these cases,

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I don't think that they are some of the bigger issues for the overall consolidated cases. So although there is going to be one 30(b)(6) deposition on this issue, there's a number of other 30(b)(6) depositions on a lot of other I think more sort of overall and pressing issues in these cases.

So I don't want to belittle the importance of this issue, but I think it's just a smaller one overall for these consolidated cases as opposed to ones like, you know, improper training, things like that.

THE COURT: Is the 30(b)(6) on this topic scheduled?

MS. WEISS: I know there's a witness, I don't know when that witness is scheduled for.

THE COURT: Does someone, Mr. Rickner, do you know?

MR. RICKNER: I, unfortunately, I do not have that information at my fingertips but I will say that the lion's share of these have been scheduled to be completed before the end of March. So there's a good chance that it is scheduled and, you know, it's not just getting the documents, we need to prepare and think about them in order to make proper use. So

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giving them to us, you know, what happens to be two days beforehand doesn't necessarily do much good.

I mean also to the other point, this is protests as part of the Black Lives Matter movement, racism among high level people at the NYPD is of paramount importance. This isn't something that could be I think shuffled to the side or just dealt with later because it's not a big issue, it is a big issue. And also the idea that this Court's order would sort of just go into the morass of regular discovery is a false equivalence, this is a Court order, it goes to the top of the pile, it gets paramount importance. And, frankly, it's important over emails and other requests and other things they're doing.

THE COURT: Well I think they're talking about other productions in this case so I'm not sure this particular, I mean I don't know but I'm not sure this particular production is more important than other productions they're doing in this case, is that what you're saying?

MR. RICKNER: Well, I'm saying that the other productions may not necessarily be part of a Court order and I do think, in general Court orders should take priority. But another --

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THE COURT: No, no, they're willing to do that, what they're saying is if you do it then now other things are going to be delayed. I mean I can't believe this is going to delay much but that's their point. They're not saying that it won't happen, they're saying that it will cause delay in other things. So my question is, you know, what, is this of greater, you know, temporal importance than the other things in terms of the need for the documents (indiscernible), that's all I was trying to figure out.

I don't think it's going to make much difference. I'm going to, I'm going to give a date in the next week or two to produce these so I'll figure them out at the end of this. I think we're okay on this now.

MR. RICKNER: Yep, understood, thank you, Your Honor.

THE COURT: Okay, my next issue is 379, we're going to end with the prior protests. So, Mr. Rickner, I think this was your letter, right?

MX. GREEN: No, I believe this is mine and this is Mx. Green, Your Honor.

THE COURT: I'm looking at 379, it has Mr.

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THE COURT: Go ahead, Mr. Rickner. Actually, Ms. Weiss, you were done, right?

MR. RICKNER: I'd just like to correct --

THE COURT: Hold on, Ms. Weiss, you were done, right?

MS. WEISS: Well I just wanted to conclude by saying, you know, based upon the good faith the defendants are trying to engage in, I don't think that sanctions are appropriate.

MR. RICKNER: I'd like to correct the record, Your Honor, on one specific issue. We have not been spreading different discovery issues across different teams. The body worn camera audit trail logs are a perfect example. This has been, for better or worse, my problem from the beginning, I'm on the Sierra team, I have one protest, not all 83, but I've been -- but I didn't limit my demands to that protest. I worked with everyone, I've been on all the meet and confers on the issue which, mind you, the City, in fact, has shifted around who's on the meet and confers, but I've handled this, you know, pretty much from start to finish, I've always been the point person on communicating about this with the attorneys assigned and that's the way we do it every time.

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So somebody has Aviation, actually that was me, as well, so that's a bad example. Somebody has the audit trail logs. Somebody has disciplinary records. And it's really always been the same attorney on one of the consolidated teams who's followed up. So the accusation that we're somehow picking an issue and coming at it with five different people throwing emails at Ms. Weiss or the rest of defense counsel, that's not true. That's not what we've been doing.

And I'd also like to note, it has taken a remarkable amount of coordination on the plaintiffs' side, we aren't always in agreement, to always present a unified front with one person handling each issue. Almost always. I mean I can't say we've always been perfect but 95 percent of the time, we've worked together internally and then put one person up to handle it.

THE COURT: All right, let me do what's simple. What's simple is I issued a very clear order requiring documents to be produced and the City failed to comply with it. The excuse I have heard is certainly not sufficient for that. It does not show, it does not show substantial justification or any other circumstances that make an award of expenses

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2 unjust. So with respect to the failure to comply with
3 the order, Mr. Rickner, your, I'm awarding as a
4 sanction your attorney's fees for having to write me
5 the letter, I guess your letter of February 8th, and
6 any other related time for that. So if you can make a
7 presentation by letter to me at some point to get
8 those fees and so we can specify the amount of those
9 fees.

10 MR. RICKNER: Yes, Your Honor.

11 THE COURT: With respect to the substantive --
12 okay, with respect to, and by the way, I suggest you
13 show it to the other side and maybe they'll agree on
14 the amount and then I won't have to be involved. With
15 respect to the overall issue of the production of the
16 body worn camera audit logs, I'm not happy certainly
17 with the City's conduct during that, I'm on the fence
18 about it, I'm going to reserve sanctions on that, I'm
19 going to see how things go otherwise and I reserve the
20 right to issue sanctions with respect to that course
21 of conduct but at this point I'm not going to be doing
22 that today so that's being reserved to another date.

23 Let me just address what Ms. Weiss said, it's
24 probably going to come up with Mx. Green, the notion
25 that it's unfair to ask you to keep up with discovery

issues is completely unacceptable. If the case is not sufficiently staffed, it needs to be sufficiently staffed. Ms. Pestana is an extremely competent administrator and attorney and if the demands are large enough that more staff is needed she will understand that, you need to present that to her. You need to suggest to her that I've raised this issue with you. It's not acceptable for you to say that, and I'm now quoting you, "It's unfair to defendants to ask us to keep up with the discovery demands here." The, if you had come to me and said that there were, you were getting different signals from the plaintiffs, that you had two different attorneys asking for the same thing and doing it in different ways, I want to hear about that immediately, that that is unfair. But if there are 10 discovery issues or 15 discovery issues and they're being presented by 4 or 5 lawyers, that's not, that's not a grave problem it seems to me. You're certainly welcome to have a single conference with each, they're all required to speak when you want to meet and confer, if that scheduling makes it easier for you, but there's no point in, as long as they're keeping to the notion that the discovery requests or discovery disputes, each one is being handled by a single

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attorney, that's nothing to complain about, they don't all have to be handled by one attorney.

And as I said, you know, if there's a problem, the solution is not to ignore Court orders and refuse to meet and confer, I mean there is a whole litany of that here. The solution, if it's a problem, is to come to me and say here's how to make this more efficient, we need to have it done some particular way, you know, these two attorneys are across purposes and we can't keep up with that.

It doesn't surprise me that in a case like this, I think you said there were nine attorneys on it, one person may just be responsible for dealing with the discovery disputes and that might involve a lot of meeting and conferring during the week, so that shouldn't be a big surprise. And part of the reason, from what I can tell from the letters, that we need so much meeting and conferring is that the City is not giving definitive positions on things.

You know, I'm ready to decide disputes about what is burdensome and what is not burdensome but the City has to get to the point where it can articulate exactly what the burden is which almost never happens. Even when it comes to me there is just this sort of

1 generic statement about this is burdensome without
2 saying, you know, what's involved, without saying how
3 many hours are involved, how much personnel is
4 involved. At the bare minimum the City has to figure
5 out, if it's going to be making these objections, what
6 actually is the burdensomeness objection, I'm almost
7 never getting that. So from the record presented to
8 me, and the record from the City is extremely thin, I
9 get very detailed letters from the plaintiffs
10 describing at length, you know, refusals by the City
11 to meet and confer, cutting off a session after an
12 hour and a half that involves a lot of issues, the
13 City never denies any of this, never responds, never
14 explains. And if the only explanation is going to be,
15 well, we can't keep up, that's just not an acceptable
16 explanation. What's going on here is just of the
17 character of what might be expected in a case like
18 this.
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20 Okay, so that's my ruling as to 379. I think
21 what we have left is 369, the prior (indiscernible) so
22 I'll turn it over to Mx. Green.

23 MX. GREEN: Thank you, Judge. I think there
24 are a couple of things in the letter, I'm happy to try
25 to address them all at once or if you'd rather, as we